

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION**

TENTATIVE RULINGS

EVENT DATE: 05/02/2016
JUDICIAL OFFICER: Kevin DeNoce

EVENT TIME: 08:20:00 AM

DEPT.: 43

CASE NUM: 56-2014-00453766-CU-PO-VTA
CASE TITLE: THOMAS VS. RECREATION RESOURCE MANAGEMENT

CASE CATEGORY: Civil - Unlimited

CASE TYPE: PI/PD/WD - Other

EVENT TYPE: Motion for Summary Adjudication - as to Cross-Defendant Henry Thomas
CAUSAL DOCUMENT/DATE FILED: Motion for Summary Adjudication, 02/09/2016

With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you can send an email to the court at: Courtroom43@ventura.courts.ca.gov or send a telefax to Judge DeNoce's secretary, Hellmi McIntyre at 805-477-5894, stating that you submit on the tentative. Do not call in lieu of sending a telefax, nor should you call to see if your telefax has been received. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

The court's tentative ruling is as follows:

Defendant/cross-complainant Recreation Resource Management, Inc. dba Meyer Management, Inc. requests summary adjudication in its entirety.

For purposes of this motion only:

Undisputed material facts nos. 1-10, 12-24, 26-28 are undisputed and established.

Undisputed material facts nos. 11 and 25 are disputed and not established.

Additional disputed material facts are established.

Discussion:

On June 4, 2012, cross-defendant Henry Thomas ("Mr. Thomas") rented a pontoon boat from cross-complainant Recreation Resource Management ("RRM") to go fishing with his son, Jeffrey Alan Thomas, the plaintiff in this action. RRM was in the business of renting boats at Lake Piru. As part of his arrangement with RRM, Mr. Thomas was required to sign a "Watercraft Rental Registration Form" which contains a section entitled PASSENGER RELEASE of LIABILITY, including the following language:

"In consideration of my use of a watercraft rented from [RRM], for the purpose of recreational activity, I, HENRY THOMAS, THE UNDERSIGNED, acknowledge and agree as follows:

- The risk of injury associated with watercraft activities may be significant. I knowingly and freely assume all such risk both known and unknown, and furthermore assume full responsibility for the participation of all other participants who

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may join me in this activity.

- *I willingly agree to comply with the stated rules and regulations, and the customary terms and conditions for the use of all rented equipment.*

- *I hereby release, indemnify, and hold harmless [RRM], their officers, agents and employees with respect to any and all injury, disability, death, loss or damage to person or property arising from participation in this activity, to the fullest extent permitted by law."*

At about 2 p.m. on the afternoon of June 4, 2012, Mr. Thomas pulled his boat into the dock from where he and plaintiff continued to fish. Jeffrey sat in a seat at the front of the boat. As he leaned back in the seat, it broke and snapped off, causing him to fall back onto the floor of the boat and injure himself. An inspection of the seat after the accident revealed that the bottom of the seat and the screws securing it to the boat were completely corroded and covered with rust, causing the seat to break under plaintiff's weight when he sat back against the back of the seat.

According to Mr. Thomas, PI's injuries are alleged to have resulted from the cross-complainant's negligence, not the result of any watercraft activities. Mr. Thomas contends that the "Indemnity Agreement" signed by Henry Thomas on June 4, 2012 does not contain a statement, expressed in clear and unequivocal terms, that Henry Thomas shall indemnify RRM for RRM's negligence; thus, it must be considered a general indemnity agreement not including injuries caused by the indemnitee's own negligence. Moreover, according to Mr. Thomas, the damages claimed by plaintiff are beyond the scope of the "Indemnity Agreement," since the "Indemnity Agreement" is limited to, and therefore covers only, "the risk of injury associated with watercraft activities" and not for failure to inspect and maintain a boat prior to rental.

The court finds that there is a triable issue of fact as to whether the injury and loss at issue arose out of participation in a watercraft activity. Plaintiff may have been engaging in recreational watercraft activity when the incident occurred (fishing on the boat), but the breaking of the chair is not recreational watercraft activity. If the parties intended to have losses arising out of any use of the rental boat, they could have contracted for that broader scope but instead they contracted for a more limited scope, i.e., loss arising from watercraft activities.

Whether an indemnity agreement covers a given case turns primarily on contractual interpretation, and it is the intent of the parties expressed in the agreement that should control. When the parties knowingly bargain for the protection at issue, the protection should be afforded. This requires an inquiry into the circumstances of the damage or injury and the language of the contract, and each case will turn on its own facts. (See *Morton Thiokol*, 193 Cal.App.3d 1025.) Again, here, if the parties intended to have losses arising out of any use of the rental boat, they could have contracted for that broader scope. Here, they contracted for losses arising out of recreational watercraft activity. There is a triable issue as to whether the indemnity provision at issue covers the loss at issue.